In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-2053

G. CARMAN RIDLAND, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that the jury during its deliberation viewed and considered a part of an exhibit not in evidence, and that various questions and rulings by the trial court were improper.

After a jury trial in the United States District Court for Southern District of New York, petitioner was convicted on six counts of stock fraud and conspiracy to commit stock fraud, in violation of 15 U.S.C. 77q(a) and 77(x), and 18 U.S.C. 2 and 371. He was sentenced to concurrent terms of three years' imprisonment. Sentence was imposed pursuant to 18 U.S.C. 3651 with provision that petitioner be confined in a jail or treatment type institution for a period of four months; execution of the remainder of the sentence was suspended and petitioner was placed on probation for a period of two years and eight months to commence upon expiration of the prison term. The court of appeals affirmed without opinion (Pet. 15-16).

On July 9, 1973, petitioner, together with Johannes Steel, Dominic Bassani, Arnold Widlitz, Robert Feis, and Feis Securities Co., was indicted for making fraudulent misrepresentations to sell stock of Cadgie Taylor Co., Inc. Petitioner was tried together with Steel and Feis.[1]

The evidence showed that petitioner and Feis secretly paid $40,000 in cash to Stuart Schiffman,[2] Dominic Bassani and Perry Scheer, the principals of Kelly, Andrews and Bradley (hereinafter "KAB"), a broker-dealer, to induce them to sell $200,000 of the stock of Cadgie Taylor Co., Inc., a corporation controlled by petitioner.

In August 1969 petitioner, then president of Cadgie Taylor, filed with the Securities and Exchange Commission a registration statement covering 125,000 shares of common stock the corporation planned to offer for public sale. The underwriter of the offering was Feis Securities Co., the principal of which was co-defendant Feis. As approved, the registration statement provided that the 125,000 shares of Cadgie Taylor stock could be sold for a period of 120 days beginning on June 5, 1970, at $2.00 per share on a "best efforts, all or none" basis. If all the stock was not sold within the 120 days the sale would be nullified and all payments returned.

Feis Securities Co. sold few Cadgie Taylor shares in June, July and August 1970. In September Feis called Widlitz, the comptroller of another broker-dealer, request-

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[1]Prior to trial Bassani entered a plea of guilty to count one of the indictment and Widlitz to a superseding information. Both testified for the government at the trial. The indictment of Feis Securities Co. was dismissed with the consent of the government.

[2]Schiffman was an unindicted co-conspirator who testified for the government.

ing him to sell Cadgie Taylor stock to his customers. Feis told Widlitz that, in addition to the regular selling commission disclosed in the prospectus, there would be a "cash payment" involved. Widlitz declined but suggested that Fred Miller at KAB might be interested. Miller and the other principals at KAB, Scheer, Bassani and Schiffman, accepted the offer. It was agreed that KAB would undertake to sell 100,000 shares and Feis 25,000 shares; that the cash payment to KAB would be 20% of the $200,000 sales-price (or $40,000) in addition to the regular commission of $.10 per share, or $10,000; and that final approval of the $40,000 payment would be made by petitioner before the 120-day selling period lapsed. Later that month petitioner stated that $40,000 was "a lot of money", but Scheer said that KAB would not do it for less, and, moreover, that the $40,000 would have to be paid "up front", or at least held jointly, in order to insure its availability.

It became apparent that KAB would not be able to sell all the shares by October 5, 1970, the final day of the offering. Schiffman, Bassani, Feis and co-defendant Steel met and agreed to falsify the records to show that all sales had been completed by October 2, 1970. Shortly thereafter, petitioner arrived at the meeting and it was agreed that a false "all sold" telegram would be sent by KAB to Feis Securities. Subsequently KAB sold 100,000 shares of Cadgie Taylor and checks totally $200,000 were given to Feis and deposited in the escrow account.

On November 5, 1970, KAB received a $10,000 check from Feis Securities for the disclosed commissions of $.10 per share, and $40,000 in cash from Feis as KAB's undisclosed commission. The $40,000 apparently came from a Cadgie Taylor bank account in Phoenix, Arizona (Pet.

Ex. B). In March 1971 petitioner signed and filed with the S.E.C. a Form 10K falsely stating that by September 10, 1970, the company had sold the 125,000 shares.

1. Petitioner contends that his motion for a mistrial should have been granted because, contrary to the trial judge's instructions, the jury was allowed to see a bank statement showing a $35,000 withdrawal on November 3, 1970, from Cadgie Taylor's account (Pet. 9-10). This contention is without merit since the court never ruled that the withdrawal should be kept from the jury. The bank statement (Pet. 17) shows that there were two withdrawals on November 3, 1970 — one of $50,000, and another of $35,000 — and one withdrawal of $42,000 on November 5, 1970. When the bnak statement was offered into evidence petitioner's counsel requested that the notation regarding the $35,000 withdrawal be covered because it might lead to "speculation" that the $35,000 went to petitioner (App. 325a).[3] The court denied the request, saying that the entire exhibit would be received in evidence "[a]s long as nothing is said about it [the $35,000 withdrawal] with relation to Ridland" (App. 325a). The government fully complied with the court's direction.[4] In those circumstances there was no error.

2. Petitioner contends that the trial judge acted unfairly in several of his questions and rulings during the trial (Pet. 10-14). These contentions are refuted by the record.

a. Petitioner claims (Pet. 12) that the judge improperly asked biased questions of Stuart Schiffman, who was the

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[3]"App." designates the appendix filed with the court of appeals, a copy of which is being lodged with the clerk of this Court.

[4]The court never directed that the exhibit be masked (App. 423a-426a). The exhibit was not physically masked at any time during the trial, and petitioner's counsel was present when the exhibit was being sent to the jury (App. 416a, 421a-422a).

first of the government's three witnesses. However, the judge's questions were designed merely to make stock market terms such as "underwriter", "pink sheets", "over the counter", and "market maker" clear to the jury (see, *e.g.*, App. 23a-26a, 158a-160a). The trial court has the right as well as the obligation to clarify testimony at appropriate times. *United States* v. *Cole*, 491 F. 2d 1276, 1278 (C.A. 4).

b. Petitioner contends, without citation to the record, that the trial judge improperly curtailed defense counsel's questioning of witnesses (Pet. 13). The allegation is controverted by the record, which reveals the trial court patiently dealing with defense counsel's repetitiousness (App. 143a-144a), improper questions (App. 189a-190a, 229a-231a), and speeches to the jury (App. 330a-331a; see also App. 223a-225a). Petitioner does not demonstrate any particular topic counsel was prevented from pursuing nor any specific prejudice from the court's rulings.

c. Petitioner claims, again without record references, that the court "belittled" one of his witnesses (Pet. 13). Although the court asked questions designed to clarify whether the witness was a bookkeeper or an accountant (App. 358a-360a), and to determine the basis of her knowledge about the date of sale of Cadgie Taylor stock (App. 361a-366a, 372a-373a, 378a-379a), these questions did not tend to "belittle" and were well within the court's prerogative. See *McConney* v. *United States*, 421 F. 2d 248, 250 (C.A. 9), certiorari denied, 400 U.S. 821.

d. Petitioner finally contends that when the trial judge dismissed the jury for the night on January 22, 1974, after it had acquitted co-defendant Steel, he purposely slowed the "momentum of acquittal" (Pet. 13-14). This claim is sheer speculation. In adjourning at approx-

imately 7:00 p.m.,[5] the trial judge was simply following his practice of dismissing a jury before dark, a practice developed without reference to a "purpose" to harm petitioner (App. 435a). Before dismissing the jury, moreover, the court asked them if they thought they could reach a verdict in the ensuing twenty minutes and they replied that they could not (see App. 434a-435a), an answer which belies any "momentum of acquittal".

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

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[5]The exact time of the adjournment does not appear in the record. Counsel were called before the court at 6:15 p.m., and it is estimated that a little over half an hour transpired prior to the jury being excused.